

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-CR-238-3F

UNITED STATES OF AMERICA,)
)
)
v.) O R D E R
)
JOHN TYLER TYER,)
Defendant.)

This matter is before the court on the Motion to Deem Timely Notice of Appeal [DE-213] filed by Defendant John Tyler Tyer.

Tyer filed his notice of appeal [DE-192] on August 2, 2011, and since that date, his appeal has been pending in the Fourth Circuit Court of Appeals. On February 23, 2012, Tyer filed his Motion to Deem Timely Notice of Appeal in this court. Therein, he suggests that on February 22, 2012, the Government filed a motion to dismiss his appeal as untimely in the Fourth Circuit. He now asks this court to find that any delay in the filing of the notice of appeal was due to excusable neglect.

The Federal Rules of Appellate Procedure allow a district court to extend the time for filing a notice of appeal. *See FED.R.APP.PRO. 4(b)(4).* The Fourth Circuit, however, currently has jurisdiction over this action. Therefore, the court DENIES WITHOUT PREJUDICE Tyer's Motion [DE-192]. The court will take notice of Tyer's motion if the Fourth Circuit remands the case to this court to make an excusable neglect determination. *See, e.g., United States v. Simpson, 374 Fed. Appx. 462 (4th Cir. 2010)(deferring action on the Government's motion to*

dismiss an appeal in a criminal case as untimely and remanding the case to the district court to determine whether the appellant had shown excusable neglect or good cause).

SO ORDERED.

This the 27th day of February, 2012.



James C. Fox
Senior United States District Judge